

22
EXHIBIT
DATE 3/9/07
SB 306

Testimony of
Daniel P. Doyle, Ph.D.

SB 306

An Act Abolishing the Death Penalty and Replacing it with
Life Imprisonment without Possibility of Release

House Judiciary Committee
March 9, 2007

My name is Dan Doyle and I am a Professor of Sociology and Criminology at the University of Montana. I am providing this testimony as a criminologist who has studied the research literature on the death penalty for about 30 years and not as a representative of the University of Montana or the UM Department of Sociology. I wanted to specifically address the issue of deterrence as it applies to the death penalty.

It has long been assumed that execution deters murder--that fear of the death penalty will dissuade potential murders to a greater extent than an alternative sentence like life in prison without possibility of parole. But, the research done by criminologists has not shown a deterrent effect of the death penalty on murder and a consensus has developed among criminologists and most other social scientists that deterrence doesn't work in murder cases. There have been a small handful of studies by a few economists that purport to show a deterrent effect of the death penalty at least some of the time (Eg.: Ehrlich, 1975; Mocan and Gittings, 2003; Dezhbakhsh et al., 2003; Shepard, 2005). But their complex econometric models have been shown to be fraught with very serious conceptual and technical errors (Eg.: Goertzel, 2004; Berk, 2005; Fagan, 2005; Donohue and Wolfers, 2006). Subsequent reanalysis of these data show that the supposed deterrent effects are not real but rather are statistical artifacts. But even among these econometric studies, the only one that specifically examined Montana (Shepard, 2005) found no deterrent effect.

There are many other studies that have shown not only that execution does not deter murder but that it may actually encourage murder. For example, if the death penalty truly deters murder, we would expect that states with the death penalty (especially states that use the death penalty a lot) would have lower murder rates. In fact, the data show that the opposite is true. States with the death penalty actually have higher rates of murder compared to states without the death penalty (Death Penalty Information Center, 2007). Likewise, if you compare similar, adjacent states where one has the death penalty and the other does not, states with the death penalty have higher murder rates (Peterson and Bailey, 1988). Similarly, comparisons of counties with and without the death penalty yield the same findings (Harries and Cheatwood, 1997).

There is justifiable concern that the death penalty can have the unintended consequence of actually increasing murder rates. Social scientists refer to this as the "brutalization effect." Research shows that after an execution, rates of some kinds of homicide often exhibit a small but measurable increase (Bowers and Pierce, 1980; Bowers, 1988; Costanzo, 1997; Bailey, 1998). It has been argued that by executing convicts, the state sends out the message that killing is a proper way to handle perceived wrongs. Also, executions may very well stimulate murders by persons who are already unstable or who are seeking a kind of pseudo martyrdom or who want the state to help them commit suicide. Some murderers enjoy the attention that an execution brings (Costanzo, 1997).

On the face of it, the idea of deterrence makes sense. And research shows that undesirable behavior can sometimes be deterred through punishment. So why doesn't it work in capital cases? Logically, in order for deterrence to operate, a number of factors have to come together simultaneously: 1) there has to be a degree of rational calculation on the part of the offender; 2) there has to be a perceived certainty of punishment; and 3) the punishment has to be imposed soon after the crime takes place. The likelihood of these factors coming together simultaneously in capital cases is exceedingly remote.

We can examine each of these factors in turn:

- First, the potential offender has to be willing and able to engage in a kind of rational calculation, weighing perceived potential risks and benefits. This is simply not a common characteristic of most criminals in general and most murderers in particular. These are people who do not think things through before they do them. They tend to act impulsively, seldom considering the consequences of their actions on themselves or others. Murders are frequently committed in the heat of an altercation or in the midst of another crime, such as a robbery, where rational calculation is unlikely. The vast majority of known murderers have alcohol, drug, and/or psychological problems that further decrease their ability to take into account the risks associated with their actions.
- Second, research shows that for deterrence to be effective, the offender must believe that there is a high likelihood of being caught and punished--in this case being executed rather than being locked up for life. But the experience of most criminals is that they are rarely caught and punished for any criminal act. Researchers have interviewed prison inmates incarcerated for homicide and found very few inmates believed that there was any chance that they would be caught and very few had an accurate idea of what punishments they faced if caught (Kohen and Jolly, 2006). Consequently, fear of execution isn't an issue for them before they get caught since they aren't clear what kind of punishment they face and don't believe that they were going to get caught anyway. Statistically, the true risk of any given murderer being executed is infinitesimal. There were almost 17,000 murders in this country last year and only 53 executions. So the actual chances of a murder resulting in an execution are about 3/10ths of 1%.
- Third, research shows that in order for deterrence to be effective, the punishment has to come rapidly after the crime. Given the safeguards that are required under the law to protect the due process rights of those accused of murder, this simply is not possible. Speeding up the process would result in more violations of defendant constitutional rights and more instances of faulty convictions.

The consensus of social scientists is that the death penalty does not deter any more than a sentence of life without possibility of release. And there is evidence that the use of the death penalty can even increase homicides. This consensus is reflected in the fact that the American Psychological Association, the professional association of research, academic, and practicing psychologists, the American Sociological Association, the professional association of sociologists, and the American Society of Criminology, the largest professional association of criminologists have all passed resolutions calling for an end to the use of the death penalty. And this is not just the opinion of academic researchers. The American Society of Criminology includes in its membership many working in law enforcement and corrections. A recent survey of police chiefs showed that the majority of these law enforcement professionals do not believe that the death penalty is an effective law enforcement tool (Death Penalty Information Center, 2007).

Based on these research findings as well as other factors, I encourage you to support SB 306 to abolish the death penalty and replace it with the sentence of life imprisonment without possibility of release. Thank you.

References

- Bailey, William. 1998. Deterrence, Brutalization, and the Death Penalty: Another Examination of Oklahoma's Return to Capital Punishment." *Criminology* 36:711.
- Berk, Richard. 2005. "New Claims about Executions and General Deterrence: Déjà vu All Over Again?" *Journal of Empirical Legal Studies*.
- Bowers, William. 1988. "The Effect of Execution is Brutalization, Not Deterrence." In *Capital Punishment: Legal and Social Science Approaches*, edited by Kenneth C. Hass and James A. Inciardi. Newbury Park, Calif.: Sage.
- Bowers, William and Glen Pierce. 1980. "Deterrence or Brutalization: What is the Effect of Executions?" *Crime and Delinquency* 26: 453.
- Costanzo, Mark. 1997. *Just Revenge: Costs and Consequences of the Death Penalty*. New York: St. Martins Press.
- Death Penalty Information Center. 2007. <http://www.deathpenaltyinfo.org/>.
- Dezhbakhah, H., P. H. Rubin, and J. M. Shepherd. 2003. "Does Capital Punishment Have a Deterrent Effect? New Evidence from Postmoratorium Panel Data." *American Law and Economics Review* 5: 344.
- Donohue, John J. and Justin Wolfers. 2006. "The Death Penalty: No Evidence for Deterrence." *Economists' Voice* 3(5): Article 3.
- Ehrlich, Isaac. 1975. "The Deterrent Effect of Capital Punishment: A Question of Life and Death." *American Economic Review* 65: 397.
- Fagan, Jeffrey. 2005. "Deterrence and the Death Penalty: A Critical Review of New Evidence." Testimony before the New York State Assembly Standing Committees on Codes, Judiciary, and Correction, January 21, 2005.
- Goertzel, Ted. 2004. "Capital Punishment and Homicide: Sociological Realities and Economic Illusions." *Skeptical Enquirer* 28(4): 23.
- Harries, Keith and Derral Cheatwood. 1997. *The Geography of Execution: The Capital Punishment Quagmire in America*. Lanham, Md.: Rowan & Littlefield.
- Kohen, Ari and Seth Jolly. 2006. "Deterrence Reconsidered: A Theoretical and Empirical Case Against the Death Penalty." Paper presented at the annual meeting of The Midwest Political Science Association, Chicago, April 20, 2006.
- Mocan, Naci and Kaj Gittings. 2001. "Getting Off Death Row: Commuted Sentences and the Deterrent Effect of Capital Punishment." *Journal of Law and Economics* 46: 453.
- Peterson, Ruth D. and William C. Bailey. 1988. "Murder and Capital Punishment in the Evolving Post-Furman Era." *Social Forces* 66:774.
- Shepard, Joanna M. 2005. "Deterrence Versus Brutalization: Capital Punishment's Differing Impacts Among States." *Michigan Law Review* 104(2): 53.

Biography

Dr. Daniel P. (Dan) Doyle is Professor of Sociology and Criminology at the University of Montana, Missoula. He received his bachelor's degree from U.C.L.A. and his master's degree and Ph.D. at the University of Washington. He has been a member of the faculty at the University of Montana for almost 17 years. He teaches and does research in a variety of areas in criminology and criminal justice. His recent research included an evaluation of anger management, substance abuse, and sex offender treatment programming in the Montana state prison system. He is currently the principle investigator for the Missoula Arrestee Drug Use Monitoring Study, analyzing the relationship between substance abuse and criminal behavior by arrestees in Missoula County.

Professor Doyle is testifying as a criminologist and not as a representative of the University of Montana or the UM Department of Sociology.